

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

May 15, 2001

REC'D IN
REGULATORY AUTH.

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IN RE: RULEMAKING PROCEEDING - REGULATIONS FOR THE
PROVISIONING OF TARIFF TERM ~~PLANS~~ AND SPECIAL
CONTRACTS

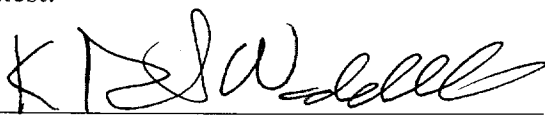
DOCKET NO. 00-00702

SEPARATE STATEMENT OF DIRECTOR MELVIN J. MALONE

Respectfully, I must vote no on these rules as adopted. Although the agency examined and studied the issues related to these rules for an extended period, the rules adopted today do not, in my opinion, adequately reflect the outcome directed by the information and documentation assimilated. As passed, these rules represent more of the type of regulation that is not competitively neutral and is inconsistent with fostering the development of a competitive environment. Still, I respect the positions of my colleagues. I, however, am not sufficiently persuaded that these rules appropriately balance the interests of the utility consumers and providers and are in the public interest. The die having been cast, given the choice between these rules and no rules, under the circumstances, competition may best be served to have no rules at all.


Melvin J. Malone, Director

Attest:


K. David Waddell, Executive Secretary

11/02/01



TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway
Nashville, Tennessee 37243
Telephone (615) 741-2904

Melvin Malone, Chairman
Sara Kyle, Director
Lynn Greer, Director

K. DAVID WADDELL
Executive Secretary

May 18, 2001

The Honorable Paul G. Summers
Attorney General and Reporter
425 Fifth Avenue North
Nashville, TN 37243-0485

Re: Approval of Rulemaking Hearing Rules Chapter 1220-4-2 Regulations for Telephone Companies

Dear General Summers:

By this letter the Directors of the Tennessee Regulatory Authority are requesting your review and approval of the above referenced rules.

These rules amend our rules concerning tariff term plans and special contracts. Recognizing the changing competitive market in telecommunication, these rules attempt to adjust the regulatory framework to reflect these changes.

Thank you, for your attention to this matter.

Sincerely,

K. David Waddell,
Executive Secretary

Rulemaking Hearing Rules
of the
Tennessee Regulatory Authority

Chapter 1220-4-2
Regulations for Telephone Companies

Amendments

1220-4-2-.59 Regulations For The Provisioning Of Tariff Term Plans And Special Contracts

(1) Definitions.

- (a) Affiliate – a person or entity who possesses, either directly or indirectly and either alone or in conjunction with another person or entity, the authority to direct or cause the direction of the management or policies of another entity. Beneficial ownership of more than ten percent (10%) of voting securities or partnership interest in another entity shall be deemed to confer authority for the purposes of these rules.
- (b) Average Annual Revenues – Aggregate revenues billable under a special contract or tariff term plan divided by the term length in years.
- (c) Price Regulation Telecommunications Carrier – For purposes of this rule, an incumbent local exchange carrier as defined in Tenn. Code Ann. § 65-4-101(d) that has implemented a price regulation plan pursuant to Tenn. Code Ann. § 65-5-209
- (d) Revenue Price-out – Quantity for each rate or service element multiplied by the individual unit rate or service element.
- (e) Shortfall Provision – A plan or contract clause requiring the customer to pay the difference between the actual billed revenue and the revenue commitment for a discrete period of time agreed upon by the price regulation telecommunications carrier and the customer.
- (f) Special Contract – A service arrangement that is entered into between the price regulation telecommunications carrier and certain customers prescribing and providing services, rates, terms, practices, or conditions that are not covered by or permitted in the tariffs or price lists filed by such price regulation telecommunications carrier. Special contracts include without limitation all special contract arrangements, contract service arrangements, individual case basis contracts, etc.

- (g) Tariff Term Plan – A service arrangement, including special promotions, offered to customers under the price regulation telecommunications carrier's general tariffs for a service term of three (3) months or longer.
 - (h) Termination Charges – All amounts, including but not limited to amounts resulting from the application of shortfall provisions, charged to the customer by the price regulation telecommunications carrier as a result of the cancellation of service prior to the time that the customer's obligations under a tariff term plan or special contract would have otherwise been satisfied.
- (2) Application. All price regulation telecommunications carriers as defined herein are subject to this rule.
 - (3) Availability. All rates, terms, and conditions of service provided to any customer under a tariff term plan or special contract shall be offered to any other customer for service of a like kind under substantially like circumstances and conditions.
 - (4) Termination Charges.
 - (a) For all tariff term plans entered into after the effective date of this rule by price regulation telecommunications carriers, termination charges shall not exceed repayment of discounts received during the previous twelve (12) months of service, except as specified in subparagraphs (c) and (d) of this paragraph.
 - (b) For any special contracts entered into after the effective date of this rule by price regulation telecommunications carriers, termination charges shall not exceed the total of the repayment of discounts received during the previous twelve (12) months of service, the repayment of the prorated amount of any waived or discounted non-recurring charges, and the repayment of the prorated amount of any documented contract preparation, implementation and tracking charges, except as specified in subparagraphs (c) and (d) of this paragraph.
 - (c) Tariff term plans and special contracts shall not permit termination charges to exceed six percent (6%) of the total tariff term plan or special contract amount. For service terms longer than four (4) years, tariff term plans and special contracts shall not permit total termination charges to exceed twenty-four percent (24%) of the average annual revenues of the tariff term plan or special contract.
 - (d) Termination charges for an individual service may exceed the levels specified in subparagraphs (a), (b) and (c) of this paragraph only upon demonstration to the Authority that the unrecovered portion, if any, of the customer specific costs incurred to provide such service exceeds the levels

in subparagraphs (a), (b) and (c) of this paragraph in the event of early termination. Price regulation telecommunications carriers shall petition for Authority approval of any such charges prior to the effective date of the tariff term plan or special contract.

- (e) Price regulation telecommunications carriers entering into a special contract or tariff term plan with a term of two (2) years or longer shall include as part of the contract signed by the customer a good faith numerical estimate of the total termination charges due from the customer in the event of early termination of service at the end of the first six (6) months of service and at the end of each six (6) month interval of service thereafter.
- (5) Use of Special Contracts and Tariff Term Plans. A price regulation telecommunications carrier shall not use special contracts in lieu of interconnection agreements and or to prescribe or provide for services, rates, terms, practices, or conditions of interconnection or any other carrier-to-carrier service arrangement.
- (6) Filing requirements.
 - (a) Each price regulation telecommunications carrier shall file with the Authority for review and approval a final, signed copy of all special contracts inclusive of attachments and addendums or a written, tariff summary at least ten (10) days before the effective date of such contracts.
 - (1) Whether the price regulation telecommunications carrier files a final, signed copy of the special contract or a tariff summary, the price regulation telecommunications carrier shall also file:
 - (i) Cost justification demonstrating adherence to the price floor as required under Tenn. Code Ann. § 65-5-208(c) and
 - (ii) Revenue price-outs for existing tariff rates, if applicable, and proposed contract rates.
 - (2) Any reference to the customer's name may be redacted unless otherwise ordered by the Authority.
 - (3) Upon application and for good cause shown, the Authority may waive the ten-day time period or any portion thereof.
 - (4) At a minimum, such tariff summaries of special contracts shall specify all material contract provisions and include:

- (i) Customer name and address, which may be filed under proprietary seal unless otherwise ordered by the Authority;
 - (ii) A full and complete description of the services provided or available to the customer;
 - (iii) All individual rates for services provided or otherwise available;
 - (iv) The term of service(s);
 - (v) Volume or quantity of services;
 - (vi) A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d) shall include detailed calculations and supporting documentation;
 - (vii) Term requirements that the customer must fulfill to qualify for the special contract;
 - (viii) Volume or quantity requirements that the customer must satisfy to qualify for the special contract; and
 - (ix) Any and all other particular requirements or conditions that the customer must meet to qualify for the special contract.
- (b) Each price regulation telecommunications carrier shall file with the Authority for review and approval all tariff term plans at least thirty (30) days before the effective date of such plans. Except, upon application and for good cause shown, the Authority may waive the thirty-day time period or any portion thereof. Each tariff term plan filed by a price regulation telecommunications carrier with the Authority shall include tariff language that sets forth at a minimum:
- 1. A full and complete description of the services available to customers;
 - 2. All individual rates for services available;
 - 3. A detailed description of all applicable termination charges. Any request made pursuant to Rule 1220-4-2-.59(4)(d) shall include detailed calculations and supporting documentation;
 - 4. Term requirements that a customer must fulfill to qualify for the tariff term plan;

5. Volume or quantity requirements that a customer must satisfy to qualify for the tariff term plan; and
 6. Any and all other particular requirements or conditions that a customer must meet to qualify for the tariff term plan.
- (7) Approval of Special Contracts and Tariff Term Plans.
- (a) Special contracts with non-affiliate customers shall be deemed approved ten (10) days after the date of the proper filing with the Executive Secretary of the special contract and other information required under Rule 1220-4-2-.59(6)(a) unless otherwise notified by the Authority.
 - (b) Tariff term plans shall be deemed approved thirty (30) days after the filing date of the tariff term plan unless otherwise notified by the Authority.
 - (c) Notwithstanding subparagraph (a) above, special contracts with affiliate customers shall be considered by the Authority at a regularly scheduled Authority Conference, and shall not be effective until explicitly approved by the Authority.
- (8) Powers of the Executive Secretary. If any issue arises as to any special contract or tariff term plan prior to the approval of the special contract or tariff term plan, the Executive Secretary shall have the power to issue a notice to the price regulation telecommunications carrier that filed the special contract or tariff term plan suspending the effective date of the special contract or tariff term plan to allow the Authority sufficient time to consider the special contract or tariff term plan at the next regularly scheduled Authority Conference.
- (9) Amended tariffs. All price regulation telecommunications carriers as defined herein shall file amended tariffs consistent with the provisions of this rule. Such tariffs shall be filed with the Authority to become effective upon the effective date of this rule.
- (10) Powers of the Authority. Nothing in these rules shall limit or otherwise alter the Authority's power to review any special contracts or tariff term plans, either upon complaint or on its own motion, and to take appropriate action as a result of such review. For the purposes of review, the Authority may require carriers to provide, among other information:
- (a) Cost justification demonstrating adherence to the price floor as required under Tenn. Code Ann. § 65-5-208(c) and
 - (b) Revenue price-outs for existing tariff rates, if applicable, and proposed contract rates.

Authority: T.C.A. §§ 65-1-209 and 65-2-102.

Rule 1220-4-8-.07(3) Tariff and Pricing Requirements for Competing Local Telecommunications Service Providers Local Service is deleted in its entirety and amended such that the amended paragraph reads:

(3) Special Contract Provisions

- (a) Each competing local telecommunication service provider shall file with the Authority either a final, signed copy of all special contracts inclusive of attachments and addenda or a written summary of the contract provisions within (30) days after the effective date of such contracts. Any reference to the customer's name may be redacted unless otherwise ordered by the Authority. At a minimum, such written summaries shall include:
 - 1. A complete description of the services provided or available to the customer.
 - 2. The effective date of the contract.
 - 3. The term of the contract.
- (b) All rates, terms, and conditions of service provided to any customer under a special contract shall be offered to any other customer for service of a like kind under substantially like circumstances and conditions.

Authority: T.C.A. §§ 65-2-102, 65-5-201, 65-5-202, 65-5-203, and 65-5-204.

Rule 1220-4-1-.07, Special Contracts, is amended by adding the following language:

Additional regulations regarding special contracts of certain telecommunications carriers operating pursuant to Tenn. Code Ann. § 65-5-209 are specified in Rule 1220-4-2-.59.

Authority: T.C.A. §65-2-102.

Repeals

Subparagraph (g) of Paragraph (2) of Rule 1220-4-2-.55, Regulatory Reform is repealed.

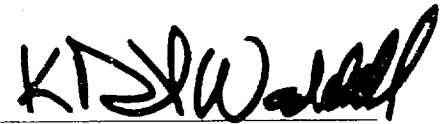
Legal Contact and/or party who will approve final copy for publication:

Richard Collier

Tennessee Regulatory Authority
 460 James Robertson Parkway
 Nashville, TN 37343
 (615) 741-2904

Contact for disk acquisition:
 K. David Waddell
 Tennessee Regulatory Authority
 460 James Robertson Parkway
 Nashville, TN 37343
 (615) 741-2904

Signature of the agency officer or officers directly responsible for proposing and/or drafting these rules:



K. David Waddell,
 Executive Secretary

The roll-call vote by the Tennessee Regulatory Authority on these rulemaking hearing rules was as follows:

	Aye	No	Abstain
Sara Kyle, Chairman	<u>X</u>	___	___
Lynn Greer, Director	<u>X</u>	___	___
Melvin Malone, Director	___	<u>X</u>	___


I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Regulatory Authority on the 15th day of May, 2001.

Further, I certify that the provisions of T.C.A. §4-5-222 have been fully complied with, that these rules are properly presented for filing, a notice of rulemaking has been filed in the Department of State on the 31st day of August, 2000 and such notice of rulemaking hearing having been published in the September, 2000 issue of the Tennessee Administrative Register, and such rulemaking hearing having been conducted pursuant thereto on the 18th day of October, 2000.



K. David Waddell,
 Executive Secretary

Subscribed and sworn to before me this the 18 day of May, 2001.


Notary Public

My commission expires on ~~My Commission Expires~~ MAR 25, 2005

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Paul G. Summers
Attorney General and Reporter

The rulemaking hearing rules set out herein were properly filed in the Department of State on the _____ day of _____, 2001 and will become effective on the _____ day of _____, 2001.

Riley C. Darnell
Secretary of State

By: _____

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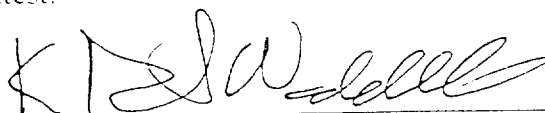
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